

# PLANNING COMMISSION MINUTES

October 16, 2002

## CALL TO ORDER:

Chairman Vlad Voytilla called the meeting to order at 7:00 p.m. in the Beaverton City Hall Council Chambers at 4755 SW Griffith Drive.

## ROLL CALL:

Present were Chairman Vlad Voytilla, Planning Commissioners Eric Johansen, Dan Maks, Shannon Pogue and Scott Winter. Planning Commissioners Bob Barnard and Gary Bliss were excused.

Senior Planner John Osterberg, Associate Planner Sambo Kirkman and Recording Secretary Sandra Pearson represented staff.

The meeting was called to order by Chairman Voytilla, who presented the format for the meeting.

## VISITORS:

Chairman Voytilla asked if there were any visitors in the audience wishing to address the Commission on any non-agenda issue or item. There were none.

## STAFF COMMUNICATION:

Observing that the applicant had requested a continuance of CUP 2001-0028 -- The Round at Beaverton Central/ Planned Unit Development, which is scheduled for October 23, 2002, Senior Planner John Osterberg announced that this hearing would be continued at that time.

## NEW BUSINESS:

Chairman Voytilla opened the Public Hearing and read the format for Public Hearings. There were no disqualifications of the Planning Commission members. No one in the audience challenged the right of any Commissioner to hear any of the agenda items, to participate in

the hearing or requested that the hearing be postponed to a later date. He asked if there were any ex parte contact, conflict of interest or disqualifications in any of the hearings on the agenda. There was no response.

## **PUBLIC HEARINGS:**

### **A. SALEM COMMUNICATIONS BROADCAST TOWER**

The proposed development is generally located west SW Oleson Road and east of SW Scholls Ferry Road on the north side of SW Vermont Street. The development site is specifically identified as Tax Lot 4000 of Washington County Tax Assessor's Map 1S1-13DC. The affected parcel is zoned Urban Standard Density (R-7) and totals approximately 12.8 acres in size.

#### **1. CUP 2001-0033: Conditional Use Permit (Public Hearing - Use)**

The applicant requests Planning Commission approval of a Conditional Use Permit (CUP) to place a second AM radio broadcast tower upon the subject site. A Conditional Use Permit is required in order to locate a utility facility within the R-7 zone. The proposed AM radio broadcast tower is a utility facility. A decision for action shall be based upon the approval criteria listed in Section 40.05.15.2.C. of the City's Development Code.

#### **2. CUP 2001-0032: Conditional Use Permit (Public Hearing - Height)**

The applicant requests approval of a Conditional Use Permit (CUP) to allow an AM radio broadcast tower of approximately 260-feet in height, to exceed the 30-foot building height standard of the City of Beaverton's R-7 zoning district. Conditional Use Permits to exceed a maximum height of a zoning district are generally reviewed administratively; however, the applicant has requested that the Planning Commission make the decision on this application. A decision for action shall be based upon the approval criteria listed in Section 40.05.15.1.C of the City's Development Code.

#### **3. TPP 2002-0003 : Tree Preservation Plan (Public Hearing)**

The applicant requests Tree Preservation Plan (TPP) approval in order to remove trees and impact significant natural resources on the subject site. The proposed TPP will affect one (1) City designated Significant Grove, NX-03, which contains significant trees and natural resources. Pursuant to Section 40.75.15.1.A.3 & 4, the Planning Director has determined that the proposed TPP is within

the jurisdiction of the Planning Commission's review. The Planning Commission will review the overall design of this request. A decision for action shall be based upon the approval criteria listed in Section 40.75.15.1.C.3.a and 40.75.15.1.C.4.a & b of the City's Development Code.

Chairman Voytilla announced that there has been a request by the applicant for a continuance of these three agenda items.

Commissioner Maks requested clarification with regard to the number of times these particular applications have been continued.

Observing that this would be the third time the applications associated with this proposal would be continued, Mr. Osterberg advised Commissioner Maks that new notification had been provided to all owners of property located within 500 feet of the subject site, as well as those individuals or entities who had provided written testimony or comments.

Commissioner Maks **MOVED** and Commissioner Pogue **SECONDED** a motion to continue CUP 2001-0033 – Salem Communications Broadcast Tower Conditional Use Permit (Use) to a date certain of October 30, 2002.

Motion **CARRIED**, unanimously.

Commissioner Maks **MOVED** and Commissioner Pogue **SECONDED** a motion to continue CUP 2001-0032 – Salem Communications Broadcast Tower Conditional Use Permit (Height) to a date certain of October 30, 2002.

Motion **CARRIED**, unanimously.

Commissioner Maks **MOVED** and Commissioner Pogue **SECONDED** a motion to continue TPP 2002-0033 – Salem Communications Broadcast Tower Tree Preservation Plan to a date certain of October 30, 2002.

Motion **CARRIED**, unanimously.

**B. TPP 2002-0004 -- HARN PARTITION TREE PRESERVATION PLAN**

This land use application has been submitted for the development of a property and creation of three total lots that contain a significant tree

1 grove, identified by the City of Beaverton's Tree Inventory as grove  
2 NX8. The development site is located at 2140 SW 78<sup>th</sup> Avenue. The site  
3 can be specifically identified as Tax Lot 3900 on Washington County  
4 Assessor's Map 1S1-12BA. The site is zoned Urban Standard Density  
5 (R-7) and is approximately .91 acres in size. A decision for action on the  
6 proposed development shall be based upon the approval criteria listed in  
7 Section 40.75.15.1.C.3 of the Beaverton Development Code.

8

9 Commissioner Pogue stated that although he had spoken with two  
10 individuals during his site visit, this discussion did not involve this  
11 application and would not affect his decision with regard to this issue.

12

13 On question, Associate Planner Sambo Kirkman advised Chairman  
14 Voytilla that no film of the site is available.

15

16 All Planning Commissioners indicated that they had either visited or  
17 were familiar with this site and had not had any contact with any  
18 individual(s) with regard to this specific application.

19

20 Ms. Kirkman presented the Staff Report and briefly described the  
21 proposal for a Tree Preservation Plan associated with the development  
22 of a Land Partition already approved by the Planning Director.  
23 Concluding, she recommended approval of the application, including  
24 recommended Conditions of Approval Nos. 1 through 14, and offered to  
25 respond to questions.

26

27 Commending Ms. Kirkman for a very brief but well-prepared report,  
28 Chairman Voytilla reminded those present that this issue involves only  
29 a Tree Preservation Plan.

30

31 Commissioner Maks referred to several trees scheduled for removal due  
32 to their location within the proposed building pad, pointing out that  
33 generally the trees within a building pad are not removed until the  
34 issuance of a Site Development Permit. He mentioned that this is due  
35 to the potential for changes in financing or economics, noting that there  
36 is a possibility that the property might not be developed.

37

38 Ms. Kirkman explained that in conjunction with the Land Partition,  
39 there has been identified the need for Building Permits and tree  
40 removal at that time, adding that because this involves a Tree  
41 Preservation Plan, staff is evaluating the potential for removal as part  
42 of this application. She further clarified that if the Tree Preservation  
43 Plan is approved, issuance of the required Building Permits would

1       necessitate an evaluation of the building footprint and trees to be  
2       removed.

3

4       Commissioner Maks reiterated that those trees to be removed within  
5       the building pad are not cut until a permit is issued.

6

7       Ms. Kirkman pointed out that although a Site Development Permit has  
8       not been issued, one of the Conditions of Approval associated with the  
9       Land Partition actually provides that these trees are not to be cut until  
10      the Building Permit has been established.

11

12      Commissioner Maks referred to the Arborist's Reports, the second of  
13      which provides the Conditions of Approval for the Tree Preservation  
14      Plan, and advised Ms. Kirkman that there is generally a requirement  
15      for the fencing to be flagged and that no storage of materials would be  
16      allowed within the fenced area surrounding the trees.

17

18      Ms. Kirkman referred to Condition of Approval No. 1, observing that  
19      this condition identifies the applicant's Arborist's Report, and pointed  
20      out that the Tree Protection Plan provides that during construction, in  
21      order to avoid compaction, equipment would not be permitted on the  
22      root systems.

23

24      Commissioner Maks expressed concern that the issue of storage of  
25      materials is not addressed in the applicant's Arborist's Report.

26

27      Ms. Kirkman indicated that staff is comfortable with including this as  
28      an additional Condition of Approval, adding that although the  
29      applicant's Tree Protection Plan does require the temporary  
30      construction fence, because there is no reference to the customary  
31      orange flagging, staff is comfortable with including this as well.

32

33      Chairman Voytilla referred to Condition of Approval No. 4, suggesting  
34      that the reference to the developer is not appropriate, and suggested  
35      that this should be replaced with property owner.

36

37      Ms. Kirkman concurred, observing that this Condition of Approval  
38      should reference the property owner, rather than the developer.

39

40      Commissioner Maks noted that Condition of Approval No. 4 references  
41      Condition of Approval No. 3, and suggested that there should be some  
42      stipulation with regard to "if the damaging party proposes".

43

1 Chairman Voytilla expressed concern with enforcing this Condition of  
2 Approval on a sub-contractor, observing that the property owner would  
3 be a more appropriate responsible party.

4  
5 Referring to Condition of Approval No. 14, Chairman Voytilla  
6 questioned how staff proposes to address enforcement of the  
7 preservation of these specific 15 trees.

8  
9 Ms. Kirkman indicated that staff has identified a deed restriction as  
10 part of Condition of Approval No. 5, emphasizing that the property  
11 owners are to be made aware that these particular trees are significant.  
12 She pointed out that information with regard to any violation is  
13 generally received through Code Services or other neighbors.

14  
15 Chairman Voytilla emphasized that situations change over time,  
16 observing that staff changes and neighbors move away, adding that  
17 because enforcement is an issue, it might be necessary to consider some  
18 type of mitigation.

19  
20 Ms. Kirkman indicated that the property owners have some  
21 responsibility with regard to notifying the City of Beaverton concerning  
22 the removal of a tree that might occur due to an act of nature, such as  
23 disease or a windstorm.

24  
25 Noting that he understands Ms. Kirkman's comments, Chairman  
26 Voytilla indicated that he is not certain whether this is appropriate or  
27 thorough enough.

28  
29 Ms. Kirkman suggested the possibility of requiring that these particular  
30 trees be preserved unless removal is necessary and permitted through  
31 the provisions of the Development Code.

32  
33 Chairman Voytilla expressed his opinion that there should be some  
34 allowance with regard to natural occurrences, adding that he would also  
35 prefer that these Conditions of Approval are included on the plat to  
36 ensure that they run with the land.

37  
38 **APPLICANT:**

39  
40 **MICHAEL HARN**, representing *MD Harn Enterprises*, briefly  
41 described the proposal for a Tree Preservation Plan for the development  
42 of a Land Partition, observing that he concurs with the Staff Report and  
43 has no issues with any of the recommended Conditions of Approval.  
44

1 Commissioner Pogue referred to the Neighborhood Meeting Minutes of  
2 August 7, 2002, requesting clarification with regard to the effect of the  
3 removal of those trees proposed to be removed upon trees on adjacent  
4 properties.

5  
6 **RICK GRAEBE**, arborist representing *Tree Care & Landscapes*  
7 *Unlimited*, responded because of the natural break that exists between  
8 the trees, there should not be any issue with regard to wind throw that  
9 could potentially result from the removal of some of these trees.

10  
11 **PUBLIC TESTIMONY:**

12  
13 No member of the public testified with regard to this application.

14  
15 Referring to Condition of Approval No. 14, Ms. Kirkman recommended  
16 an amendment providing for removal that is permitted in accordance  
17 with the Development Code.

18  
19 Chairman Voytilla expressed his opinion that this amendment is  
20 reasonable and addresses the issue.

21  
22 Ms. Kirkman suggested the possibility of creating an additional  
23 Condition of Approval with regard to a plat note to the easement.

24  
25 The public portion of the Public Hearing was closed

26  
27 Commissioner Pogue expressed his support of the application, including  
28 the suggested modifications to the Conditions of Approval.

29  
30 Chairman Voytilla expressed his support of the application, adding that  
31 he also supports the adjustments to the Conditions of Approval.

32  
33 Expressing his opinion that the application meets applicable criteria,  
34 Commissioner Johansen expressed his support of the proposal and  
35 Conditions of Approval, as modified.

36  
37 Observing that the proposal meets applicable criteria, Commissioner  
38 Maks expressed his support of the application.

39  
40 Commissioner Winter expressed his opinion that the application meets  
41 applicable criteria, noting that he would support a motion for approval.

42  
43 Commissioner Maks **MOVED** and Commissioner Pogue **SECONDED**  
44 a motion to approve TPP 2002-0004 – Harn Partition Tree

1 Preservation Plan, based upon the testimony, reports and exhibits, and  
2 new evidence presented during the Public Hearing on the matter, and  
3 upon the background facts, findings and conclusions found in the Staff  
4 Report dated October 9, 2002, including Conditions of Approval Nos. 1  
5 through 14, and amended, as follows:

6  
7 5. Prior to final plat approval, the developer shall provide deed  
8 restrictions for Lots 1, 2 and 3, where trees are approved for  
9 preservation, as shown on the Preliminary Plat **and Final Plat**,  
10 to be recorded at Washington County Department of Records  
11 and Elections. The restriction shall briefly describe the trees on  
12 the lot to be preserved, and prohibit disturbance or removal,  
13 except as provided by the City Development Code. A copy of the  
14 deed restriction shall be provided to staff prior to issuance of the  
15 Site Development Permit.

16  
17 14. The following 15 trees, as identified on the Tree Preservation  
18 Plan map, shall be preserved: Tree Nos. 1, 2, 3, 4, 5, 6, 7, 9, 16,  
19 17, 21, 22, 23, 24 and 25, **unless removal is permitted**  
20 **through the Beaverton Development Code.**

21  
22 **15. Install a temporary six-foot high metal no-climb fence to**  
23 **protect the trees and their root systems. Said temporary**  
24 **fence shall be identified with colored flagging along the**  
25 **top. This tree preservation fencing will not be removed**  
26 **or entered for any reason without the knowledge or**  
27 **consent of the consulting arborist. All construction**  
28 **materials will be stored outside this protection area.**

29  
30 Chairman Voytilla mentioned Condition of Approval No. 4 with regard  
31 to his earlier comment requesting that this condition reference  
32 property owner, rather than developer.

33  
34 Commissioner Maks amended the motion, as follows:

35  
36 4. If the ~~developer~~ **property owner** proposes replacement of  
37 damaged trees, as described above, such replacement shall be  
38 determined in accordance with the Code, but shall at a  
39 minimum, be replaced with no less than two (2) trees within the  
40 immediate area where the tree was removed. At the time of  
41 planting, coniferous trees shall be balled and burlapped or in  
42 suitable containers in which the tree has grown for one year.  
43 The ball of each tree shall be firm and the burlap sound. Each

1 tree shall be a minimum of six feet in height, fully branched,  
2 and adequately staked at the time of planting.

3  
4 Commissioner Pogue **SECONDED** the amendment to the motion.

5  
6 Motion, as amended, **CARRIED**, by the following vote:

7  
8 **AYES:** Johansen, Maks, Pogue, Voytilla and Winter.

9 **NAYS:** None.

10 **ABSTAIN:** None.

11 **ABSENT:** Barnard and Bliss.

12  
13 **MISCELLANEOUS BUSINESS:**

14  
15 The meeting adjourned at 7:33 p.m.